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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/669,246	09/24/2003	Darren Williams	5-5722-001	3531
803	7590	01/25/2006	EXAMINER	
STURM & FIX LLP 206 SIXTH AVENUE SUITE 1213 DES MOINES, IA 50309-4076			LARSON, JUSTIN MATTHEW	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 01/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/669,246	Applicant(s) WILLIAMS, DARREN	
	Examiner Justin M. Larson	Art Unit 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 November 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is made FINAL as Examiner is maintaining the rejections originally set forth in the first Office Action, Paper No. 20050818, and is also introducing new grounds of rejection in response to Applicant's amendment, filed November 10th, 2005.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 3, 5, 6, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pencoske (US 6,237,825) in view of Silin (US 2,970,316) and Velasco, Jr. et al. (US 6,278,372). Pencoske discloses a transport device (10) comprising a receptacle member (21) having a rear panel (12) and a front panel (20), the front panel at least partially comprising netting material (col. 2 line 56), and a securing unit including a plurality of straps (16 & 17) operatively associated with the upper portion of the rear panel of the receptacle member, but fails to disclose the securing unit utilizing clip members on the ends of the straps. Silin, however, teaches a transport device (24) with a securing unit that also includes a plurality of straps (28 & 30) dimensioned to extend from the upper portion of the receptacle member to a location proximate the front pockets of an angler's shirt; the straps differing from those of Pencoske in that they connect directly to various locations on a user's apparel using a button with a button-receiving hole (col. 2 line 71). While Silin teaches the use of

Art Unit: 3727

button-receiving holes rather than clips, Velasco, Jr. et al. teaches that when connecting an object to a person's clothing, one may use either a button-receiving hole or an alligator clip. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the transport device of Pencoske by using straps such as those taught by Silin, allowing the user to securely fasten the backpack directly to their clothing, and to use clips at the end of the straps in place of button-receiving holes, as taught by Velasco, Jr. et al. so that the straps could be connected to any location of clothing without needing preexisting buttons attached to the clothing.

Regarding the limitation set forth in claim 1 that requires the rear panel of the receptacle member to be fabricated from a waterproof material, because applicant has failed to traverse the examiner's assertion of official notice, that fact that it is old and well known in the art to construct various panels of backpacks out of nylon, a waterproof material, or other similar material, is taken to be admitted prior art.

The initial statement of intended use and all other functional implications have been carefully considered but are deemed not to impose any patentably distinguishing structure over that disclosed by Pencoske, Silin, and Velasco Jr., et al. which is capable of being used in the intended manner, i.e., for transporting landing nets. There is no structure in Pencoske, Silin, and Velasco Jr., et al. that would prohibit such functional intended use (see MPEP 2111).

Regarding the newly added limitation in claim 1 which requires that at least one of the clip members be disposed to attach to a back of the shirt collar, the initial

Art Unit: 3727

statement of intended use and all other functional implications have been carefully considered but are deemed not to impose any patentably distinguishing structure over that disclosed by Pencoske, Silin, and Velasco Jr., et al. which is capable of being used in the intended manner, i.e., at least one of the straps with clip members being located such that it is capable of being attached to a shirt collar. There is no structure in Pencoske, Silin, and Velasco Jr., et al. that would prohibit such functional intended use (see MPEP 2111). The device of Pencoske, Silin, and Velasco Jr., et al. has clip members which are disposed such that they are capable of being attached to the shirt collar of a user.

Regarding claim 10, Pencoske, Silin, and Velasco Jr., et al. disclose the claimed invention except for the receptacle having a top opening with no closure. The receptacle of Pencoske, Silin, and Velasco Jr. et al. has a closure (flap 22, Pencoske). It would have been obvious to one having ordinary skill in the art at the time the invention was made to omit the closure flap of Pencoske, since it has been held that omission of an element and its function in a combination where the remaining elements perform the same functions as before involves only routine skill in the art. In re Karlson, 136 USPQ 184. The remaining receptacle body would still function to retain objects on a user's back and by removing the closure flap, a user is granted easier access to the objects in the receptacle.

4. Claims 2, 4, and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pencoske in view of Silin and Velasco Jr. et al., and further in view of Ekman et al. (4,764,962). The art as applied above in paragraph 3 discloses the claimed invention

Art Unit: 3727

except for at least one strap/clip member being operatively associated with the lower portion of the receptacle member. Ekman et al., however, teaches a transport device that is connected to a user's clothing using strap/clip members (22 & 24) operatively associated with both the upper and lower portions of the receptacle member (18), securing the transport device to the user's belt or pants (figure 1). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the transport device of Pencoske, Silin, and Velasco Jr. et al. by including a strap/clip member operatively associated with the lower portion of the transport device in order to anchor the lower portion to the user's belt or pants and keep the device from flopping around on the user's back which may cause discomfort or annoyance.

5. Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pencoske, Silin, Velasco Jr. et al. in view of Ekman et al., and further in view of Stair (1,626,166). The art as applied above in paragraph 4 discloses the claimed invention except for at least one more additional strap element extending from the upper portion of the receptacle member. Stair, however, teaches an article (8) connected to a user's clothing by two straps (6) with button-receiving holes and also uses a third strap element (12) that utilizes a button-receiving hole to adjust the height at which the article is supported on the user's back. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of the art as applied above in paragraph 4 by including an additional strap element at the top portion of the receptacle member, as taught by Stair, and to replace the button-receiving

hole taught by Stair with an alligator clip, as taught by Velasco, Jr. et al., so that the user may adjust the height at which the transport device is supported on their back without the need to have preexisting buttons at various heights on the back of their clothing. The use of the alligator clip would also allow the user to secure this additional strap element to the collar of their shirt if they so desired.

6. Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pencoske, Silin, and Eckman et al. in view of Alcorn (US 6,036,067).

Regarding claim 11, the device of Pencoske, Silin, and Eckman et al. can be used in the manner claimed. Pencoske discloses a netted pack with shoulder straps. Silin and Eckman et al. teach that such a pack can be suspended by a plurality of straps clipped to a user's clothing at various locations as opposed to using the type of shoulder straps commonly found on backpacks, such as those taught by Pencoske. A user could dispose the device of Pencoske, Silin, and Eckman et al. on their back, affix a lower clip member to their clothing near their waist, affix an upper clip member to their clothing near their neck, affix at least one strap over their shoulder, the strap having one end attached to the carrier, the user finally affixing the other end to a front torso region of their person. Pencoske, Silin, and Eckman et al. do not teach retaining a landing net in the receptacle.

Alcorn, however, teaches that it is known for fisherman to carry a receptacle on their person for retaining a landing net so that they may have easy access to the landing net in a time of need. One of ordinary skill in the art would recognize that any object of a size permitting storage in the receptacle of Pencoske, Silin, and Eckman et al. could in

Art Unit: 3727

fact be stored therein, including a landing net, as taught by Alcorn, which would allow a fisherman to carry a landing net on their person for easy access while fishing in case the landing net was needed in a hurry.

Regarding claim 12, one of ordinary skill in the art could position the landing net in the carrier such that the entire handle protruded from the receptacle or such that the handle was concealed within the receptacle depending on their preference. Also, if a user were to place a small landing net in the receptacle, the handle might incidentally be at least partially if not fully concealed within the receptacle due to the size of the landing net alone. Similarly, if a rather large landing net were placed in the receptacle, the handle might be fully disposed outside of the receptacle, but this would be incidental to the size of the landing net, not the structure of the receptacle. For these reasons, Examiner considers the device of Pencoske, Silin, and Eckman et al. in view of Alcorn to satisfy the limitations of the claim.

Response to Amendment

7. In view of Applicant's amendment to Figures 1-3, the original rejection with respect to reference numeral 10 has been withdrawn.

8. In view of Applicant's amendment to the specification, the original rejection with respect to the abstract has been withdrawn.

Response to Arguments

9. Applicant's arguments filed November 10th, 2005 have been fully considered but they are not persuasive.

Art Unit: 3727

10. Applicant has asserted that none of Pencoske, Silin, or Velasco, Jr. et al. discloses or teaches a clip member for securing the net transport device to the wearer's shirt collar. Examiner agrees with Applicant that these references do not specifically teach a clip being attached to a shirt collar, however, the claim language, as currently presented, recites only functional language implying that a clip member can be attached to a shirt collar. Specifically, the claim language directed at this clip/collar attachment reads as follows: "at least one of said clip member being disposed to attach to a back of the shirt collar." This limitation requires only that the clip members are disposed in a location such that they are capable of being attached to a shirt collar. Nowhere does the claim language recite the clip members being positively attached to the shirt collar. Examiner takes the position that some of the straps with clips of the Pencoske, Silin, and Velasco Jr., et al. device are disposed at the upper portion of the receptacle and are located such that they are capable of being attached to a shirt collar if a user so desires, effectively satisfying the functional limitations of the claim.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Particularly, Schneider (US 5,651,141) and Bracken (US 2,717,391) teach landing nets that are directly attached to the collar of a user's apparel.

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within


Art Unit: 3727

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justin M. Larson whose telephone number is (571) 272-8649. The examiner can normally be reached on Monday - Friday, 8am - 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on (571) 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


NATHAN J. NEWHOUSE
SUPERVISORY PATENT EXAMINER

JML